

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7683 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GANIBHAI RASULBHAI MEMON

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MS TALATI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 27th June, 1999, made by the District Magistrate, Banaskantha,

in exercise of the powers conferred upon him by section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The grounds of detention suggest that two prohibition offences have been registered against the petitioner in the months of February 1999 and May 1999. The first of the offences was pending for trial and latter was pending investigation. In both the cases, the petitioner was found to be in possession of a large quantity of English liquor. Besides, four witnesses have given statements in respect of the nefarious activities of the petitioner, and its adverse effect on the public tranquility and the even tempo of life. It is, therefore, held that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order.

It is contended that the exercise of powers under the Act was unwarranted in as much as there was no imminent apprehension of breach of peace on account of the petitioner's alleged bootlegging activities. It is submitted that the offence was registered against the petitioner on 11th May, 1999, and the statements of the witnesses were recorded on 24th and 25th May, 1999. No action was taken against the petitioner till 27th June, 1999. Said delay has snapped the live link between the cause of action and the impugned order. It is further contended that the Detaining Authority has failed to apply its mind why it could not have resorted to the less drastic measure of approaching the court for cancellation of bail under section 437 (5) of the CRPC. Thus, the preventive detention has been resorted to without proper application of mind. The power of detention is, therefore exercised without the authority of law. Besides, the representation made by the petitioner on 21st July, 1999 has not been attended to thereby violating the fundamental right of the petitioner conferred under Article 22 (5) of the Constitution of India.

The petition is not contested. The delay in initiating action after the cause of action has not been explained, nor it is answered whether the representation made by the petitioner was attended to without loss of time. It is also not reflected whether the Detaining Authority had effectively considered the possibility of getting the bail cancelled instead of resorting to the preventive detention. In absence of the defence, the

contentions are required to be accepted. The continued detention of the petitioner is, therefore illegal and void.

Petition is, therefore, allowed. The impugned order of preventive detention dated 27th June, 1999, is quashed and set aside. The petitioner, unless is required to be detained in some other cases, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI